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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ENTROPIC COMMUNICATIONS,
16 LLC,

17 Plaintiff,

18 v.

19 COMCAST CORPORATION;
20 COMCAST CABLE
21 COMMUNICATIONS, LLC; and
22 COMCAST CABLE
23 COMMUNICATIONS MANAGEMENT,
24 LLC,

25 Defendants.

26 ENTROPIC COMMUNICATIONS,
27 LLC,

28 Plaintiff,

v.

COX COMMUNICATIONS, INC.;
COXCOM, LLC; and COX

Case No.: 2:23-cv-01050-JWH-KES

**JOINT RESPONSE TO ORDER TO
SHOW CAUSE REGARDING
CONSOLIDATION**

[Judge John W. Holcomb; Magistrate
Judge Karen E. Scott]

Hearing Date: March 31, 2023

Time: 9:00am

Place: Courtroom 9D of the Ronald
Reagan Federal Building and U.S.
Courthouse, 441 W. 4th Street, Santa
Ana, California

Case No.: 2:23-cv-01049-JWH-KES

**JOINT RESPONSE TO ORDER TO
SHOW CAUSE REGARDING
CONSOLIDATION**

[Judge John W. Holcomb; Magistrate
Judge Karen E. Scott]

1 COMMUNICATIONS CALIFORNIA,
2 LLC,
3 Defendants.
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Courthouse, 441 W. 4th Street, Santa
Ana, California

1 Plaintiff Entropic Communications, LLC (“Entropic” or “Plaintiff”), Defendants
 2 Comcast Corporation, Comcast Cable Communications, LLC, and Comcast Cable
 3 Communications Management, LLC (“Comcast”), and Defendants Cox
 4 Communications, Inc., CoxCom, LLC, and Cox Communications California, LLC
 5 (“Cox”) (jointly with Plaintiff, the “Parties”) hereby submit the following Response to
 6 the Court’s February 21, 2023 Order to Show Cause Regarding Consolidation.

7 **I. BACKGROUND**

8 Entropic filed two cases on February 10, 2023 alleging patent infringement of the
 9 same group of patents by two different groups of defendants. Those cases, which
 10 include the instant action, are:

- 11 • *Entropic Communications, LLC v. Cox Communications, Inc., et al.* Case
 12 No. 2:23-cv-01049, Filed February 10, 2023 (C.D. Cal.) (“Cox Action”).
- 13 • *Entropic Communications, LLC v. Comcast Corporation, et al.* Case No.
 14 2:23-cv-01050, Filed February 10, 2023 (C.D. Cal.) (“Comcast Action”)
 15 (together with Cox Action, the “Related Actions”).

16 As alleged in each complaint, the claims in both cases arise under the patent
 17 laws of the United States, 35 U.S.C. § 1 et seq., including specifically 35 U.S.C.
 18 § 271, based on the defendants’ alleged infringement of the same eight patents. Those
 19 patents include U.S. Patent Nos. 8,223,775, 8,284,690, 8,792,008, 9,210,362,
 20 9,825,826, 10,135,682, 11,381,866, and 11,399,206 (collectively the “Patents-in-Suit”
 21 or “Asserted Patents”). (Docket Entry “DE” 1 in both cases.) Entropic contends these
 22 patents all incorporate various elements of technology related to telecommunications
 23 products and services. (*See generally, id.*)

24 In connection with filing each complaint, Entropic also filed notices of related
 25 cases due to each case’s relatedness to each other, as well as to an existing case
 26 entitled *Entropic Communications, LLC v. DirecTV, LLC, et al.*, 2:22-cv-07775-JWH-
 27 JEM (C.D. Cal.). (DE 5 in both cases.) The Court deemed the cases related and
 28

1 transferred them to the Honorable John W. Holcomb on February 15, 2023. (DE 12 in
2 both cases.)

3 On February 21, 2023, this Court issued an Order to Show Cause Regarding
4 Consolidation (the “Order”). (DE 13 in both cases.) The Court ordered the Parties to
5 show cause why the two Related Actions should not be consolidated for pretrial
6 purposes, and further ordered the Parties to submit a joint response detailing their
7 collective or respective positions regarding pretrial consolidation. (*Id.*)

8 After serving the Order on all Defendants, Entropic initiated meet and confer
9 discussions regarding the Parties’ positions on consolidation of the Related Actions,
10 which positions are detailed below.

11 **I. ENTROPIC’S POSITION REGARDING CONSOLIDATION**

12 Entropic’s position is that the Related Actions should be consolidated for all
13 pretrial purposes. As noted in the Court’s order, there is obvious overlap in subject
14 matter between the two Related Actions, and Entropic believes consolidation will
15 allow both the Court and the Parties to leverage this overlap to reduce burden on the
16 Court and increase efficiency for the Parties and Court alike through all pre-trial
17 phases of the case.

18 **A. Consolidation Will Reduce Burden on the Court**

19 Consolidation of the Related Actions will reduce burden on the Court by 1)
20 reducing the number of duplicative filings and orders, 2) reducing the number of
21 separate hearings on procedural and substantive issues the Court must schedule, and
22 3) allowing the Court to resolve similar issues of law and fact in a single case rather
23 than two separate cases, thereby avoiding the risk of inconsistent rulings.

24 First, consolidation would reduce duplicative filings and orders on similar
25 topics, such as scheduling orders, briefing schedules, protective orders, ESI orders,
26 joint status reports, and motion practice on similar issues. For example, this would
27 mean a single case schedule and protective order rather than two separate case
28 schedules and protective orders.

1 Second, consolidation would allow the Court to hold one joint hearing rather
2 than two separate hearings on the above issues (including the Scheduling Conference
3 and Status Conferences) or other issues such as Markman hearings, technology
4 tutorials for all eight Asserted Patents, and other pretrial motions. The same is true for
5 any discovery disputes between the parties, which could be more easily resolved in a
6 single case rather than two separate cases. This will keep the Court's calendar moving
7 efficiently and allow the Court to more easily manage the Parties during the pendency
8 of the case.

9 Finally, consolidation would allow the Court to resolve similar issues of law
10 and fact related to the patents in each action in a single case rather than two separate
11 cases, thereby avoiding the risk of inconsistent rulings. Both actions relate to the
12 infringement of Entropic's patents that incorporate various elements of technology
13 related to telecommunication products and/or services provided by the defendants.
14 Further, the accused products in both actions are similar and incorporate the same or
15 similar chips from a third party manufacturer Broadcom. In addition, the accused
16 services, which are provided by the defendants in each action by means of the accused
17 products, are similar telecommunication services. As such, consolidation would allow
18 the Court to more efficiently resolve these issues of law and fact as they relate to the
19 same eight patents asserted in both of the Related Actions in a single case. Given the
20 perfect overlap of Asserted Patents between both cases, the benefit to the Court in
21 resolving all issues in a single case would be considerable.

22 **B. Consolidation Will Increase Efficiency for the Parties**

23 Furthermore, consolidation would benefit the Parties by allowing for increased
24 efficiencies for all of the reasons stated above as well as for purposes of streamlining
25 discovery. Discovery issues—including issues related to Entropic's witnesses and
26 documents—will be substantially similar between all both of the Related Actions,
27 which would lead to increased efficiency if the actions were consolidated. The same
28 third parties will be at issue in both of the Related Actions, as the accused products in

1 both cases incorporate the same or similar chips from third party manufacturer
2 Broadcom. Similar efficiencies are to be had in scheduling depositions, meeting and
3 conferring regarding discovery and substantive motions, and reducing the duplicative
4 depositions of the same witness in each case. Furthermore, any individual or entity
5 subject to third party discovery will enjoy the same benefit, and both the Parties and
6 the Court can resolve third party discovery issues for the same third parties in one case
7 rather than in two. The efficiencies gained by the Parties would benefit not only the
8 Parties, but also the Court in resolving any disputes that may arise related to
9 scheduling, discovery, procedural issues, or motion practice.

10 Defendants expressed a concern regarding limitations imposed on their
11 discovery following consolidation. Although this Response is not the right setting to
12 discuss this issue, Entropic believes that entirely separate discovery is unwise because
13 efficiencies are available by various aspects of consolidated discovery. For example,
14 burden on both the Court and Parties could be limited through fewer stipulated
15 protective orders, fewer ESI orders, and streamlined written discovery and deposition
16 scheduling.

17 Entropic further understands that Defendants propose that “additional measures
18 should be taken to facilitate case management” due to the “sheer volume of asserted
19 patents” such as “reduction in asserted claims.” Entropic notes that the number of
20 asserted patents and claims will be the same whether or not the cases are consolidated.
21 Insofar as case management goes, this Response is again not the right setting to
22 discuss those issues. However, Entropic notes that it stands behind its Complaints and
23 the claim charts attached thereto. Defendants are welcome to accelerate the natural
24 process in every patent case of focusing the claims in dispute by sharing discovery
25 and invalidity contentions with Entropic earlier than required by the Rules, and
26 joining Entropic in seeking an accelerated Markman process. Entropic is also happy to
27 meet and confer regarding case management issues in advance of the Case
28 Management Conference once Defendants have answered the complaint.

1 For the foregoing reasons, Entropic respectfully requests that the Related Actions
2 be consolidated for pretrial purposes.

3 **II. COMCAST AND COX DEFENDANTS' POSITION REGARDING**
4 **CONSOLIDATION**

5 The Comcast and Cox Defendants (collectively "Defendants") do not object to
6 consolidation for pretrial purposes of the Comcast and Cox actions (C.A. 23-cv-01050
7 and 23-cv-01049) as long as each Defendant is capable of taking discovery
8 independently, briefing limits will not be impacted, and Defendants are afforded the
9 right to an independent trial on all issues. While both actions involve the same plaintiff
10 and the same asserted patents, the Defendants each expect to have unique defenses and
11 counterclaims, and expect to emphasize different issues in their respective cases.¹ In
12 addition, the Defendants offer competing services, and expect that they will have
13 confidential information that cannot be shared between the Defendants. Accordingly,
14 the ability to serve independent written discovery, pursue their own deposition
15 testimony, and file their own briefs (*e.g.*, Markman, summary judgment, and discovery
16 motions) will be important in allowing Defendants an opportunity to mount a full and
17 fair defense. With the understanding that no party will be prejudiced by consolidation
18 because no discovery limits or briefing limits will be impacted, and the forthcoming
19 schedule can take into account any additional time necessary as a result of the increased
20 number of defendants, Defendants do not oppose consolidation. In addition, should the
21 issues in one case diverge sufficiently, Defendants believe it may be appropriate to sever
22 one or more of the cases.

23 Defendants also believe additional measures should be taken to facilitate case
24 management and judicial efficiency. Plaintiff has asserted eight (8) patents in these
25

26 ¹ Defendants presently take no position on Entropic's statements concerning
27 Broadcom and potential third-party discovery. Defendants would note that several of
28 the claim charts attached to each of Entropic's complaints make no mention of
Broadcom chips. In addition, the complaint sets forth no basis to identify all of the
Broadcom chips allegedly used by each Defendant, and what similarities or
differences exist between those various Broadcom chips.

1 cases. The sheer volume of asserted patents will make these cases unwieldy and warrant
 2 a reduction in the number of asserted claims. Defendants would propose that the parties
 3 meet and confer to provide the Court with a recommended approach for this reduction
 4 in asserted claims, and that the Court should order a procedure and schedule for
 5 implementing this reduction to facilitate management of these cases.

6 **SIGNATURE CERTIFICATION**

7 Pursuant to L.R. 5-4.3.4(a)(2)(i), I, Christina N. Goodrich, attest that all other
 8 signatories listed herein and on whose behalf the filing is submitted concur in the
 9 filing's content and have authorized the filing.

11 **K&L GATES LLP**

12 Dated: March 10, 2023

By: /s/ Christina N. Goodrich
 Christina Goodrich
 Connor J. Meggs

Attorneys for Plaintiff Entropic
 Communications, LLC

16 Dated: March 10, 2023

17 **WINSTON & STRAWN**

18 By: /s/ K. Padmanabhan
 Krishnan Padmanabhan

Attorneys for Defendants
 Comcast Corporation;
 Comcast Cable Communications, LLC;
 and Comcast Cable Communications
 Management, LLC

22 Dated: March 10, 2023

23 **KILPATRICK TOWNSEND & STOCKTON LLP**

24 By: /s/ April E. Isaacson
 April E. Isaacson

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 Cox Communications, Inc.;
 CoxCom, LLC; and Cox
 Communications California, LLC